



State of Connecticut
DIVISION OF CRIMINAL JUSTICE

Testimony of the Division of Criminal Justice
Joint Committee on Judiciary – March 26, 2009

In opposition to:

- **S.J.R. No. 46 Resolution Proposing an Amendment to the Constitution of the State of Connecticut Concerning the Procedures of the Courts**

The Division of Criminal Justice opposes S.J.R. No. 46, Resolution Proposing an Amendment to the Constitution of the State of Connecticut Concerning the Procedures of the Courts, for the same reason that we opposed similar legislation in past years – it represents a serious and unnecessary encroachment by the General Assembly onto the rule-making authority of the Judicial Branch.

As we noted in the past, the rules of practice and procedure deal with the internal operations of the courts and deal directly with the courts ability to effectively determine the lawful rights and interests of the parties and to interpret and apply the laws. The judges who deal with cases on a daily basis and who see and hear first hand the lawyers and litigants appearing before them are by far in the best position to establish rules of procedure which, more often than not, deal with such issues as limitations on pages or the margin sizes of briefs or the nature or issues that must be addressed before or during trial. These rules ensure the orderly and effective process of litigation so that cases may proceed in a timely and effective manner and issues that should be decided will be decided. The rules are detailed and technical. The legislative process is not a practical process for their enactment.

The Judicial Branch has a process for enacting and amending the rules of practice that is responsive to the needs of the courts, the litigants and lawyers and the public in general. Committees of judges study the rules and the need for changes. Proposals to change the rules may be made by anyone and public comment is invited before the rules committee proposes changes. Actions of the Judicial Branch demonstrate that it has been deliberately responsive to concerns of the public.

Further, the reality is that the rule-making authority of the courts is already shared between the General Assembly and the Judicial Branch in an arrangement that has effectively served as a check and balance on both of these separate and equal branches of government. When the rule-making authority of the Judicial Branch and the legislative branch has overlapped each branch has been mindful and respectful of the authority and interests of the other. See, for example, *State v. James*, 211 Conn. 555, 559-536 (1989); letter dated March 3, 1998, to Chief Justice Robert Callahan from Senator Donald E. Williams, Jr., and Representative Michael P. Lawlor. While it is true that this sharing of power between the branches has resulted at times in tension, it is equally true that this tension has led to careful and deliberate resolution of problems.

In conclusion, the Division of Criminal Justice believes a constitutional amendment is neither necessary in terms of its practical application nor wise in view of its constitutional

implications. Even before the concept of this resolution was introduced two years ago the issues it concerns were already being addressed by the Judicial Branch itself and the Judicial Branch continues to address those concerns. In recognition of the good-faith efforts that have already been undertaken by the Judicial Branch, and which are continuing today, this resolution should be rejected.

The Division of Criminal Justice thanks the Committee for allowing this opportunity to provide our input on this issue. We would be happy to provide any additional information the Committee might desire or to answer any questions.